

James D. Emerson, No. 042031

LAW OFFICES OF
EMERSON, COREY, BARSOTTI & SORENSEN
2520 WEST SHAW LANE, SUITE 102
FRESNO, CALIFORNIA 93711-2765
Telephone: (559) 432-7641
Facsimile: (559) 432-7639

Attorneys for Defendant, DNC PARKS & RESORTS AT YOSEMITE, INC

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PAMELA C. BAZZELL and ROGER
BAZZELL,

Plaintiffs,

vs.

DNC PARKS & RESORTS AT YOSEMITE,
INC.; and DOES 1 THROUGH 10 INCLUSIVE,

Defendants.

AND CONSOLIDATED ACTION

) Cons Case No.: 1:05-CV-00394-AWI-LJO

) [Cons w/ Case No. 1:05-CV-00847-REC-DLB]

) **STIPULATION FOR DISMISSAL**
) **AND ORDER**

IT IS HEREBY STIPULATED by and between the parties hereto that this matter may be dismissed, with prejudice in its entirety pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

It is the intention of the parties to submit this stipulation to the United States District Court, Eastern District, asking for an order of dismissal with prejudice.

1 DATED: January 31, 2006.

2 MILES, SEARS & EANNI

3 By /S/ Richard C. Watters
4 Richard C. Watters,
5 Attorneys for Plaintiffs, PAMELA and
6 ROGER BAZZELL

7 DATED: January 31, 2006.

8 EMERSON, COREY, BARSOTTI & SORENSEN

9 By /S/ James D. Emerson
10 James D. Emerson
11 Attorneys for Defendants, DNC PARKS &
12 RESORTS AT YOSEMITE

13 **ORDER**

14 The parties seek dismissal of this action pursuant to Rule 41(a) of the Federal Rules of Civil
15 Procedure. Rule 41(a)(1), in relevant part, reads:

16 an action may be dismissed by the plaintiff without order of court (i) by filing a notice of
17 dismissal at any time before service by the adverse party of an answer or of a motion for
18 summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal
19 signed by all parties who have appeared in the action. Unless otherwise stated in the
20 notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice
of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has
once dismissed in any court of the United States or of any state an action based on or
including the same claim.

21 Rule 41(a)(1)(ii) thus allows the parties to dismiss an action voluntarily, after service of an answer,
22 by filing a written stipulation to dismiss signed by all of the parties who have appeared, although an
23 oral stipulation in open court will also suffice. Carter v. Beverly Hills Sav. & Loan Asso., 884 F.2d
24 1186, 1191 (9th Cir. 1989); Eitel v. McCool, 782 F.2d 1470, 1472-73 (9th Cir. 1986). Once the
25 stipulation between the parties who have appeared is properly filed or made in open court, no order
26 of the court is necessary to effectuate dismissal. Fed. R. Civ. Pro. 41(a)(1)(ii); Eitel, 782 F.2d at

1 1473 n.4. Because Plaintiff has filed a stipulation for dismissal with prejudice as to all parties under
2 Rule 41(a)(1)(ii) that is signed by all parties who have made an appearance, this case has terminated.
3 See Fed. R. Civ. Pro. 41(a)(1)(ii); In re Wolf, 842 F.2d at 466; Gardiner, 747 F.2d at 1189; see also
4 Gambale, 377 F.3d at 139; Commercial Space Mgmt, 193 F.3d at 1077; cf. Wilson, 111 F.3d at 692.

5 Therefore, IT IS HEREBY ORDERED that this action is DISMISSED and the Clerk of the
6 Court is DIRECTED to close this case in light of the parties' filed and signed Rule 41(a)(1)(ii)
7 Stipulation For Dismissal With Prejudice.

8
9 IT IS SO ORDERED.

10 **Dated:** February 3, 2006
11 0m8i78

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE